

**REMARKS**

The Examiner has required restriction of the claims as follows:

- I. Claims 1-14, drawn to a method of preparing microcapsules; and
- II. Claims 15-30, drawn to a microcapsules.

Applicants thank the Examiner for clarifying by telephone call on September 30, 2008 that the Examiner intended to require restriction of the full set of claims (claims 1-38) of the Preliminary Amendment dated November 30, 2005<sup>1</sup>, and for clarifying that the Examiner did not require an election of species in the July 28<sup>th</sup> restriction requirement.

Applicants respectfully traverse the restriction requirement. Citing MPEP § 806.05(f), the Examiner states that a product and its process of use can be shown to be distinct if the product as claimed can be made by another and materially different process. (emphasis added) The Examiner cites the alternate processes of a powder layering process or solution layering process using coating pans or fluid beds. (By “solution layering process,” Applicants presume that the Examiner refers to the claimed coacervation process.) While not making any statement regarding the patentable distinctness of the claimed method, Applicants submit that the Examiner’s arguments are insufficient because the Examiner has not shown that the alternative powder-layering process is *materially different* from the claimed coacervation process. In addition, the Examiner has not shown that there would be a serious burden on the Examiner if restriction were not required but merely states that “one or more” of four reasons apply.

Accordingly, Applicant respectfully requests that the requirement for restriction be withdrawn. In the event that the elected claims are found allowable, Applicant requests rejoinder of the method claims of Group I. *See* MPEP § 821.04(b).

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account

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<sup>1</sup> Preliminary Amendment submitted with the National Stage filing entered on November 30, 2005.

50-1283. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. 1.136(a)(3).

Dated: 10/06/08

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